IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924 1925

STATE OF ARKANSAS ex rel. J. S. UTLEY, Attorney-General of the State of Arkansas, for the Use and Benefit of Craighead County, Arkansas,

Petitioner,

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI PACIFIC RAILROAD COMPANY,

Respondents.

No. 74

BRIEF FOR RESPONDENTS ON PETITION FOR CERTIORARI.

THOMAS B. PRYOR,
GORDON FRIERSON,
Solicitors for Missouri Pacific Railroad Company.

WILLIAM J. ORR,
EDWARD L. WESTBROOKE,
EDWARD T. MILLER,
Solicitors for St. Louis-San Francisco Railway Company.

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STATE OF ARKANSAS ex rel. J. S. UTLEY, Attorney-General of the State of Arkansas, for the Use and Benefit of Craighead County, Arkansas, Petitioner, v. ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI PACIFIC RAILROAD COMPANY, Respondents.	No. 410.

BRIEF FOR RESPONDENTS ON PETITION FOR CERTIORARI.

STATEMENT.

The Maccabees obtained judgment in the District Court of the United States against Craighead County, Arkansas, in the sum of $77,680, in aid of the collection of which mandamus issued out of said Court to compel the assessing authorities of said County to increase the assessment of all property therein for the taxing years 1921 and 1922. Instead of increasing the assessment of all property in the County the assessing authorities merely increased the assessment

of all property for county general purposes, permitting the former assessment to stand for all other purposes.

Respondents paid all taxes assessed against them for the years in question except the county general tax, and tendered payment of the latter on the assessment fixed for all other taxes. This tender was declined and suits were instituted against respondents in the Chancery Court of said County to recover the full amount of unpaid taxes assessed against them. Respondents prevailed in the Chancery Court, and its judgment was affirmed by the Supreme Court of Arkansas February 11, 1924, and motion for rehearing was denied March 10, 1924. 258 Southwestern Reporter 609.

The judgment of the Maccabees against Craighead County was duly satisfied in full on the record April 3, 1924, a duly certified copy of said judgment and its satisfaction being hereto attached as "Exhibit A", appearing in the Appendix, and which respondents pray leave to file and have considered by the Court in support hereof. A copy of said judgment appears as "Exhibit C" to the complaint filed in said Chancery Court, and is the judgment referred to at page 2 of petitioner's brief herein.

The Supreme Court of Arkansas gave full faith and credit to the judgment of the District Court and its mandamus issued in aid thereof. It recognized the

jurisdiction of the District Court over subject-matter and parties in the Maccabee case, and the validity of the judgment and mandamus rendered and issued thereby in the exercise of such jurisdiction. The Supreme Court also recognized that said judgment and mandamus were binding and conclusive upon it.

The Supreme Court of Arkansas interpreted the mandamus according to its plain language, and held that the assessing authorities failed to comply therewith. It held further that the tax payers were bound by an assessment made in accordance with the District Court's mandamus, but because the assessment was not such as was directed by the District Court it was void because neither in compliance therewith nor with the Constitution and laws of the State. The Supreme Court of Arkansas did not fail to give full faith and credit to the judgment and mandamus of the District Court, but refused to approve an assessment made contrary thereto and in a manner prohibited by the Constitution and laws of the State.

BRIEF OF THE ARGUMENT.

I.

The sole object of the assessment held void by the State Court being the enforcement of the Maccabee judgment against the County, the satisfaction by payment of that judgment leaves nothing for review by this Court, and the petition for certiorari should be denied.

From the very nature of the case the satisfaction of judgment does not appear from the record filed by petitioner. It occurred after the decision of the State Supreme Court which was rendered February 11, 1924, and after the motion for rehearing was denied March 10, 1924. The judgment was satisfied of record April 3, 1924. Evidence *dehors* the record is therefore admissible to advise the Court that there is no real and substantial controversy between petitioner and respondents.

"But this court is compelled, as all courts are, to receive evidence *dehors* the record affecting their proceeding in a case before them on error or appeal. * * * It is by reason of the necessity of the case that the evidence by which such matters are brought to the attention of the court must be that, not found in the transcript of the original case, because it oc-

curred since that record was made up. To refuse to receive appropriate evidence of such facts for that reason is to deliver up the court as a blind instrument for the perpetration of fraud, and to make its proceedings by such refusal the means of inflicting gross injustice."

Dakota County v. Glidden, 113 U. S. 222, l. c. 225, 226.

"The fact that there is no controversy between parties to the record ought, in the interest of a pure administration of justice, to be allowed to be shown at any time before the decision of the case. Any other rule would put it in the power of designing persons to bring up a feigned issue in order to obtain a decision of this Court upon a question involving the rights of others who have had no opportunity to be heard."

Little v. Bowers, 134 U. S. 547, l. c. 558.

Among the numerous cases in which this principle has been announced are Singer Manufacturing Co. v. Wright, 141 U. S. 696; American Book Co. v. Kansas, 193 U. S. 49; Gulf, Colorado & Santa Fe Ry. Co. v. Dennis, 224 U. S. 503, and Kendall v. Ewert, 259 U. S. 139.

II.

***No Federal question was decided by the Supreme* Court of Arkansas adversely to the rights of petitioner.**

The writ of mandamus appears at pages 2 and 3 of petitioner's brief. It requires the defendants to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value in money until the judgment in favor of the Maccabees and costs shall have been paid in full. It further recites that as the property in said County had theretofore been assessed at not exceeding fifty per cent of its assessed value the total assessment made under the writ should be at least double the amount of the total assessment theretofore made.

The writ does not provide the method of assessment, that necessarily being left to the operation of the State law. It did not direct that the assessment should extend only to county general taxes, but applies to the entire assessment. This construction of the writ should not be open to controversy. The State Supreme Court held that the effect of the mandamus was to compel the assessing officers to assess all the property in the County at full valuation in the mode provided by the laws of the State—

that is to say, by a single valuation for all taxation purposes. The Court further held that all tax payers would be bound by an assessment made in accordance with the mandamus, but denied the validity of the assessment because the assessing officers disobeyed the mandamus. An assessment made pursuant to the mandamus would, in the opinion of the State Supreme Court, have been valid and in conformity with the State laws as the latter have been uniformly interpreted by the State Courts. What the State Supreme Court held was, that respondents were not bound by an assessment not authorized either by the judgment of the Court or by the laws of the State.

The laws of Arkansas as construed by the Supreme Court of that State in numerous cases provide that there can be only one assessment of property for all purposes of taxation—State, County, Municipal and School. Hays v. Missouri Pacific R. R. Co., 159 Ark. 101; Fort Smith & Van Buren Bridge case, 62 Ark. 461; Bank of Jonesboro v. Hampton, 92 Ark. 492; Drew Timber Co. v. Board, 124 Ark. 569; State ex rel. v. Meek, 127 Ark. 349; Eureka Fire Hose Co. v. Deffenbaugh, 129 Ark. 41. In line with those decisions construing similar Constitutions and laws of other States are Taylor v. Louisville & N. R. R. Co., 88 Fed. 350; Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, and cases therein cited.

Thus it will be seen that, in the suit brought by Craighead County against these respondents to collect taxes based on this assessment, the Supreme Court of Arkansas gave full faith and credit to the Federal judgment and mandamus, declaring that assessments made pursuant thereto would be valid, but refused to enforce these illegal assessments because not made in conformity with the plain requirement of the mandamus.

If the mandamus had required the assessment to be made in the manner adopted by the assessing authorities, as contended for by petitioner, it would have been unenforceable because it would have required the assessing authorities to violate their oath of office in performing an act which it was not their duty to perform, and which under the Constitution and laws of Arkansas they were prohibited from performing. It cannot be presumed, in aid of the erroneous construction given by petitioner to the mandamus, that the District Court would have required these officers so to act. If the language of the mandamus was ambiguous it would be given a construction in harmony with the State Constitution and laws. Being expressed in unequivocal terms it requires no aid in construction, but must be interpreted according to its plain language. The Supreme Court of Arkansas so interpreted it.

In State ex rel. v. Meek, 127 Ark. 349, the Court said:

> "Mandamus is an appropriate remedy to compel a public officer to perform all duties prescribed by law, but the remedy cannot be used as asked in this case, for the purpose of compelling an officer to do that which he is required by the constitutional mandate and the express direction of a superior tribunal not to do."

This principle is tersely expressed by Mr. Chief Justice Waite in Ex parte Rowland, 104 U. S. 604, l. c. 612, as follows:

> "It is also settled that more cannot be required of a public officer by mandamus than the law has made it his duty to do. The object of the writ is to enforce the performance of an existing duty, not to create a new one."

In Supervisors v. United States, 18 Wall. 71, l. c. 77, Mr. Justice Strong expressed the same thought in different language as follows:

> "It is very plain that a mandamus will not be awarded to compel county officers of a State to do any act which they are not authorized to do by the laws of the State from which they derive their powers. Such officers are the creatures of the statute law, brought into existence for public purposes, and having no authority

beyond that conferred upon them by the author of their being. And it may be observed that the office of a writ of mandamus is not to create duties, but to compel the discharge of those already existing."

To the same effect are United States v. County of Clark, 95 U. S. 769, l. c. 773; United States v. County of Macon, 99 U. S. 582, l. c. 591; Brownsville v. Loague, 129 U. S. 493, l. c. 501; and International Contracting Co. v. Lamont, 155 U. S. 303, l. c. 308.

Respondents therefore pray that the petition for certiorari be denied.

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